

§ 453.9

duties or responsibilities of these persons in a particular labor organization or trust.

[28 FR 14394, Dec. 27, 1963, as amended at 30 FR 14925, Dec. 2, 1965]

§ 453.9 “Handling” of funds or other property by personnel functioning as a governing body.

(a)(1) *General considerations.* For many labor organizations and trusts special problems involving disbursements will be presented by those who, as trustees or members of an executive board or similar governing body, are, as a group, charged with general responsibility for the conduct of the business and affairs of the organization or trust. Often such bodies may approve contracts, authorize disbursements, audit accounts and exercise similar responsibilities.

(2) It is difficult to formulate any general rule for such cases. The mere fact that a board of trustees, executive board or similar governing body has general supervision of the affairs of a trust or labor organization, including investment policy and the establishment of fiscal controls, would not necessarily mean that the members of this body “handle” the funds or other property of the organization. On the other hand, the facts may indicate that the board or other body exercises such close, day-to-day supervision of those directly charged with the handling of funds or other property that it might be unreasonable to conclude that the members of such board were not, as a group, also participating in the handling of such funds and property.⁸ Also, whether or not the members of a particular board of trustees or executive board handle funds or other property in their capacity as such, certain of these members may hold other offices or have other functions involving duties directly related to the receipt, safekeeping or disbursement of the funds or other property of the organization so that it would be necessary that they be bonded irrespective of their board membership.

(b) *Nature of responsibilities as affecting “handling.”* With respect to particular responsibilities of boards of

⁸ As to group coverage, see § 453.16.

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trustees, executive boards and similar bodies in disbursing funds or other property, much would depend upon the system of fiscal controls provided in a particular trust or labor organization. The allocation of funds or authorization of disbursements for a particular purpose is not necessarily handling of funds within the meaning of the section. If the allocation or authorization merely permits expenditures by a disbursing officer who has responsibility for determining the validity or propriety of particular expenditures, then the action of the disbursing officer and not that of the board would constitute handling. But if pursuant to a direction of the board, the disbursing officer performed only ministerial acts without responsibility to determine whether the expenditures were valid or appropriate, then the board's action would constitute handling. In such a case, the absence of fraud or dishonesty in the acts of the disbursing officer alone would not necessarily prevent fraudulent or dishonest disbursements. The person or persons who are charged with or exercise responsibility for determining whether specific disbursements are bona fide, regular, and in accordance with the applicable constitution, trust instrument, resolution or other laws or documents governing the disbursement of funds or other property should be considered to handle such funds and property and be bonded accordingly.

[28 FR 14394, Dec. 27, 1963, as amended at 30 FR 14926, Dec. 2, 1965]

SCOPE OF THE BOND

§ 453.10 The statutory provision.

The statute requires that every covered person “shall be bonded to provide protection against loss by reason of acts of fraud or dishonesty on his part directly or through connivance with others.”

[30 FR 14926, Dec. 2, 1965]

§ 453.11 The nature of the “duties” to which the bonding requirement relates.

The bonding requirement in section 502(a) relates only to duties of the specified personnel in connection with their handling of funds or other property to

which this section refers. It does not have reference to the special duties imposed upon representatives of labor organizations by virtue of the positions of trust which they occupy, which are dealt with in section 501(a), and for which civil remedies for breach of the duties are provided in section 501(b). The fact that the bonding requirement is limited to personnel who handle funds or other property indicates the correctness of these conclusions. They find further support in the differences between sections 501(a) and 502(a) of the Act which sufficiently indicate that the scope of the two sections is not coextensive.

§ 453.12 Meaning of fraud or dishonesty.

The term "fraud or dishonesty" shall be deemed to encompass all those risks of loss that might arise through dishonest or fraudulent acts in handling of funds as delineated in §§ 453.8 and 453.9. As such, the bond must provide recovery for loss occasioned by such acts even though no personal gain accrues to the person committing the act and the act is not subject to punishment as a crime or misdemeanor, provided that within the law of the State in which the act is committed, a court would afford recovery under a bond providing protection against fraud or dishonesty. As usually applied under State laws, the term "fraud or dishonesty" encompasses such matters as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication or any other fraudulent or dishonest acts resulting in financial loss.

[30 FR 14926, Dec. 2, 1965]

AMOUNT OF BONDS

§ 453.13 The statutory provision.

Section 502(a) of the Act requires that the bond of each "person" handling "funds or other property" who must be bonded be fixed "at the beginning of the organization's fiscal year * * * in an amount not less than 10 percentum of the funds handled by him and his predecessor or predecessors, if any, during the preceding fiscal year, but in no case more than \$500,000." If there is no

preceding fiscal year, the amount of each required bond is set at not less than \$1,000 for local labor organizations and at not less than \$10,000 for other labor organizations or for trusts in which a labor organization is interested.

§ 453.14 The meaning of "funds."

While the protection of bonds required under the Act must extend to any actual loss from the acts of fraud or dishonesty in the handling of "funds or other property" (§ 453.7), the amount of the bond depends upon the "funds" handled by the personnel bonded and their predecessors, if any. "Funds" as here used is not defined in the Act. As in the case of "funds or other property" discussed earlier in § 453.7, the term would not include property of a relatively permanent nature such as land, buildings, furniture, fixtures, or property similarly held for use in the operations of the labor organization or trust rather than as quick assets. In its normal meaning, however, "funds" would include, in addition to cash, items such as bills and notes, government obligations and marketable securities, and in a particular case might well include all the "funds or other property" handled during the year in the positions occupied by the particular personnel for whom the bonding is required. In any event, it is clear that bonds fixed in the amount of 10 percent or more of the total "funds or other property" handled by the occupants of such positions during the preceding fiscal year would be in amounts sufficient to meet the statutory requirement. Of course, in situations where a significant saving in bonding costs might result from computing separately the amounts of "funds" and of "other property" handled, criteria for distinguishing particular items to be included in the quoted terms would prove useful. While the criteria to be applied in a particular case would depend on all the relevant facts concerning the specific items handled, it may be assumed as a general principle that at least those items which may be handled in a manner similar to cash and which involve a like risk of loss should be included in